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IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 158 of 1981

Between

R A M D A S S
f/n Hardin — Plaintiff

\- and -

NATIVE LAND TRUST BOARD — Defendant

Messrs. Sahu Khan and Sahu Khan — Solicitors for the Plaintiff
Mr. A. Qetaki — Solicitor for the Defendant

R U L I N G

The applicant has a lease from the respondent, the Native Land Trust Board, in respect of an area of land, 19 acres 3 roods in extent, dating from 1st January, 1963. The lease contains the following condition:-

> "The rent shall be subject to reassessment in the years 1988 to a maximum not exceeding six (6) per centum of the unimproved value of the land."

The rental was in 1963 fixed at £22. 6.4, that is approximately $44.66. The lease was not registered till 7th November, 1966 - presumably till after the land was surveyed, but even so it predated the coming into force of the Agricultural Landlord and Tenant Ordinance (ALTO) that is 29th December, 1967.

By a notice dated 13th May, 1980 the Native Land Trust Board notified the applicant that under section 9(1)(g)(ii) of the ALTO his rent was to be reassessed at $275 per annum as from 1st September, 1980. It will be noted that not only does this contravene the provision of the lease saying that reassessment would take place in 1988 but the proposed reassessment far exceeds the increase stipulated in the lease.

The argument of the Native Land Trust Board is that the provisions of ALTO override the provisions of the lease. It is trite law that legislation will only prevail to deprive a person of his rights if it does so in clear unequivocal terms. The position here is that the applicant unquestionably has contractual rights as against the Native Land Trust Board, rights which must bind the Native Land Trust Board unless those rights are clearly and unequivocably taken away by ALTO.

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What is there in ALTO to give rise to such a deprivation of the applicant's contractual rights? ALTO itself does not contain any express provision back-dating it, or giving it overriding effect in respect of leases in existence before it came into force. In fact Section 3(2) provides:-

> "The provisions of this Ordinance shall prevail notwithstanding the provisions of any contract of tenancy created after the commencement of this Ordinance."

So there must be a presumption at least, that if the legislature intended the provisions of the Ordinance to prevail over the terms of existing contracts of tenancy it would have said so clearly, just as it said so in the case of contracts of tenancy created after the coming into force of the Ordinance.

So what is there in section 9(1)(g)(ii) that leads the Native Land Trust Board to believe it has a right to override the clear unequivocal provision of the lease it entered into with the applicant?

Section 9(1)(g) provides

> "9(1) The following conditions and covenants shall be implied in every contract of tenancy of an agricultural holding subsisting at or after the commencement of the Ordinance:-
>
> (g) on the part of both [i.e. presumably "both landlord and tenant"]-
>
> (i) in relation to contracts of tenancy made after the commencement of this Ordinance, that the rent shall be liable to reassessment at the expiry of the fifth year of the term of the tenancy and thereafter at the expiry of each successive period of five years, on either party to the agreement, serving notice of the party at least three months prior to the expiry of the five year period that he requires the rent to be reassessed
>
> (ii) in relation to contracts of tenancy subsisting at the commencement of the Ordinance, that the rent shall be liable to reassessment at any time on either party serving not less than three months notice in writing on the other party that he requires the rent to be reassessed, and thereafter, after each successive period of five years, on either party serving a notice in writing on the other party at least three months prior to the expiry of each such five yearly period, that he requires the rent to be reassessed."

So quite clearly in enacting section 9 of the Ordinance the Legislature had in mind existing tenancies as well as tenancies still to be created. But section 9 does not say, as does section 3(2) above quoted, that the provisions

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of section 9 shall prevail over the contracted provisions of the tenancy. It says "There is to be implied in the contract of tenancy the provisions detailed thereunder." What is to happen if there is already specific provision in the contract of tenancy? Are the two provisions, that is the contracted provision and the implied provision, to exist side by side? And if so which is to prevail?

Of course it would not make sense to have both the contracted provision and the implied provision existing side by side. So far as contracts of tenancy created after 29th December, 1967 is concerned Section 3(2) above quoted will act to ensure that the implied provisions would prevail. But there is nothing in the Ordinance to ensure that the implied provisions would prevail over contracted provisions in contracts of tenancy existing prior to 29th December, 1967. Section 9(1)(g)(ii) could have effect where there is no contracted provision to conflict with the implied provision. But I cannot construe it so as to deprive the applicant of his existing contractual rights.

As was said by Bowen, LJ in Turnbull v. Freeman (1885) 15QBD 234 at 238

> "Where the legislature mean to take away or lessen rights acquired previously to the passing of an enactment, it is reasonable to suppose that they would use clear language for the purpose of doing so, or to put the same thing in a somewhat different form, if the words are not unequivocably clear to the contrary, a provision must be construed as not intended to take away or lessen existing rights."

The applicant is therefore entitled to the declaration sought, namely that the Native Land Trust Board is not entitled to a reassessment of rental under Native Lease No. 12513 until 1988 and then in accordance with the terms of the lease, and I so rule.

The plaintiff shall have his costs, to be taxed if not agreed.

LAUTOKA,
8th May, 1981

(sgd.) G. O. L. Dyke
Judge